IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.3100 of 2006
Date of Decision: May 07, 2007.

Bhakra Beas Management Board .....Petitioner

versus

Union of India and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Mr.Govind Goel, Advocate for the petitioner

Mrs.Daya Chaudhary, Senior Advocate and Assistant Solicitor General, with Mr.Vir Bhan, Advocate for respondents No.1 and 2

Mr.B.S. Sudan, Advocate for respondent No.3

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ORDER:

This order will dispose of 69 writ petitions, bearing CWP Nos.3061 to 3064, 3069, 3073 to 3083, 3085 to 3087, 3090 to 3137, 3148 and 3149 of 2006, involving same questions of facts and law. For facility of reference, facts are being mentioned from CWP No.3100 of 2006.

This writ petition has been filed against the order dated 7.7.2005 (Annexure P-1), vide which the dispute raised by the respondent-workman has been referred to the Central Government Industrial Tribunal-cum-Labour Court No.2, Chandigarh, for adjudication.

By stating that the respondent-workman was an employee of the petitioner, he filed a claim statement Annexure R3/4, wherein it was prayed that he be given re-employment against any post lying vacant with

the petitioner-management, by giving preference over others (non-retrenches). It was further prayed that seniority list of the retrenched workmen be prepared and compliance of provisions of Section 25-H of the Industrial Disputes Act, 1947 (in short, the Act) be made. It was further stated that after appointing him, his service be regularized.

Averments made by him, were refuted by the petitioner, before the authorities below. The appropriate government, thereafter passed the order Annexure P/1, referring the dispute to the competent Court, for adjudication. That order is under challenge. In response to the notice issued by this Court, respondent-workman filed written statement, by stating the following facts:-

> *"1. That the petitioner has impugned the reference order (Annexure P/1) by wrongly projecting as if reference has been made on the basis of demand notice challenging retrenchment after 20 years of the retrenchment. In fact the starting point of industrial dispute is the year 1997 when instead of continuing answering respondent in service the petitioner started appointing fresh hands in violation of the provisions of Section 25-H of the Act. After the retrenchment of the answering respondent and other workman on different dates, petitioner, being aware of its statutory obligation under Section 25-H of the Act has established special cell namely Re-settlement office. Name of the answering respondent is also in the list of retrenched employees maintained by this office. Copy of the Identity Card issued to the answering respondent in this regard is appended herewith as Annexure R3/1. In compliance of its statutory obligation during the year 1990 to 1996 petitioner gave employment to*

the answering respondent as per its requirement. In the year 1997 also petitioner employed the answering respondent. Copy of the interview letter dated 25.6.1997 and offer of appointment letter No.1352-55/offer (workcharged) 23-E/ Tech. dated 3.7.1997 is appended herewith as Annexure R 3/2 & R 3/3 respectively. Therefore, there was no occasion for the answering respondent to raise the dispute regarding violation of section 25-H of the Act before the year 1997.

2. That despite availability of regular work and vacant posts, petitioner restored to unfair labour practice by appointing answering respondent on 89 days basis vide Annexure R3/3. Against this arbitrary action of the petitioner, answering respondent filed Civil Suit in the Court of Learned Sub Judge, Sundernagar, District Mandi (H.P.) on 23.9.1997 seeking declaration that answering respondent is entitle to continue in service till the date of superannuation i.e. 5.12.2009. This civil suit was contested by the petitioner and was returned under Order 7 Rule 10 of the Code of Civil Procedure by the Court of Learned Sub Judge Ist Class Sundernagar, District Mandi (H.P.) on 4.10.2002 by holding that the Civil Court has no jurisdiction to determine the dispute regarding rights and liabilities created under the Industrial Disputes Act, 1947. In these circumstances answering respondent served demand notice dated 21.11.2003. In the demand notice filing of above said Civil Suit was also mentioned. Copy of the demand notice is appended herewith as Annexure R3/4. Therefore, it cannot be said that the dispute has been raised belatedly."

At the time of arguments, it has been admitted by counsel for the petitioner that the respondent-workman, after retrenchment, was taken in service only once. This fact has seriously been disputed by counsel for the respondent, by stating that the respondent-workman had worked for various periods during the years 1990 to 1996. Counsel for the respondent-workman further argued that there was a complete violation of the provisions of Section 25-H of the Act and the juniors/ non-retrenches were appointed while claim of the petitioner was ignored. Counsel for both the parties have placed reliance upon ratio of the judgment of Hon'ble Supreme Court in *Jaswant Singh and others v. Union of India and others, (1979) 4 Supreme Court Cases 440*, to strengthen their respective arguments. Before this Court, serious dispute has been raised with regard to facts of the case. Counsel for the petitioner has stated that the respondent-workman was not an employee of the petitioner, whereas it has been argued to the contrary by counsel for the respondent-workman. We feel that such types of disputes can be better decided before the forum, where parties can lead evidence to support and prove their contention. In view of this, we dismiss this writ petition and direct the parties to appear before the Tribunal concerned.

(Jasbir Singh)
Judge

May 07, 2007 **(Nirmal Yadav)**
gk **Judge**